
PREFACE TO THE THIRD EDITION

The coming decade is likely to be one of dramatic legal development. Changes at the Supreme Court portend a period of upheaval. The Court is poised to reconsider and potentially overturn numerous fundamental precedents.

These revolutionary trends will impact the law of Federal Courts. Recent decisions have already affected the law substantially. For example:

- The Court has reduced Congress's ability to create causes of action for statutory damages. *E.g.*, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021).
- The Court has allowed states to pass laws that violate (then-existing) constitutional rights, but evade pre-enforcement challenge. *Whole Woman's Health v. Jackson*, 142 S. Ct. 522 (2021).
- The Court has substantially reduced the availability of damage actions against federal officials who violate constitutional rights. *Egbert v. Boule*, 142 S. Ct. 1793 (2022); *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017).
- The Court has signalled a substantial contraction of the availability of the writ of habeas corpus for state prisoners confined pursuant to a judgment of criminal conviction by a state court. *Shinn v. Martinez Ramirez*, 142 S. Ct. 1718 (2022); *Brown v. Davenport*, 142 S. Ct. 1510 (2022).

Further changes seem likely. There will be much to learn, and this Casebook and its Supplements will follow developments.

* * *

The Casebook will retain its signature style: Fresh. Clean. Sophisticated. More cases, fewer notes.

This Casebook presents the concepts of Federal Courts in a way that is rich and sophisticated, but fresh, clean, and uncluttered.

The selection of materials is based on the following principles:

- Whenever possible, students should read cases, rather than notes about cases.
- The case selection should include the canonical cases and concepts and explore the richness and sophistication of the Federal Courts course. But it should avoid unnecessary, obscure detail.
- The case editing should reduce cases to readable length, but should preserve the essential facts, arguments, and holdings of each case.
- Notes should guide student thinking, provide added insight, and describe important follow-up cases, but should remain brief enough to sustain

student interest and to allow the professor to put his or her own imprint on the materials.

* * *

This Casebook provides numerous discussion problems. These problems can help students determine whether they understand the rules and concepts presented. Most of the problems call for straightforward application of the rules—they are pitched at about the level of a classroom hypothetical.

Discussion problems are useful because even if a professor helps students extract rules of law from the materials in the reading and states the rules clearly, many students will not truly understand the rules until they are called upon to apply them to specific facts. That is the great virtue of the Socratic method: it compels students to apply rules of law to particular facts. The discussion problems can assist professors and students in this process.

* * *

The course in Federal Courts studies the role of the federal courts in the American system of government. It particularly considers the role of the federal courts in vindicating federal rights, the relationship of the federal courts to the other branches of the federal government, and the relationship of the federal courts to the states.

Within these broad areas, the course covers numerous topics. The topics include justiciability, jurisdiction, the law applied by federal courts, lawsuits against governments and government officers, abstention doctrines, Supreme Court review, and the writ of habeas corpus. The topics are united by core themes—themes about the role of the federal courts. The themes explored in this Casebook include:

- *Ubi jus, ibi remedium?* An ancient maxim states that “there is a remedy for every right.” Is this maxim true? Much of the course in Federal Courts addresses this question. The course explores obstacles that might get in the way of providing remedies for violations of right. Such obstacles include justiciability doctrines, jurisdictional barriers, sovereign immunity, and the desire to respect state governments and state courts.
- *Public rights v. private rights.* A central tension within federal courts law is whether the federal courts should act only to vindicate the private interests of a particular injured plaintiff, or whether they should vindicate the public interest in enforcing the Constitution and ensuring that the federal and state governments behave lawfully. Do the federal courts enforce the Constitution only as an *incident* of their function of deciding cases about particular parties, or is enforcing the Constitution part of their primary role?
- *Federalism.* The course in Federal Courts is a course in federalism. The course explores the relationship of the federal government to the states, especially the relationship between the state and federal court systems. Important questions within this theme include: (1) When must federal courts apply state law, and vice versa? (2) Are the states sovereign

entities, and do they enjoy sovereign immunity from suit in federal court? (3) Should the federal courts play the primary role in enforcing federal rights, particularly when those rights are threatened by state government actors, or should they let state courts play the primary role, with the federal courts playing only the secondary role of reviewing a case after the state courts have finished with it?

- *Separation of powers.* The course also explores the relationship of the federal courts to the other branches of the federal government. To what extent can Congress control the federal courts? To what extent can the courts control the other branches? When can federal courts generate law, and when must they leave that role to Congress?
- *Practical administration.* In addition to these grand, philosophical themes, the course also explores many practical questions about how to run an effective, efficient court system.

These themes tie together the varied materials in the Federal Courts course. Throughout, this Casebook explores how the topics presented implicate these core themes of the course.

J.S.
December 2022